

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**JACKSON STALLINGS and wife,  
SHEILA STALLINGS,  
Plaintiffs,**

**VS.**

**CITIMORTGAGE, INC., FEDERAL HOME  
LOAN MORTGAGE CORP., and  
UNKNOWN PARTIES,  
Defendants.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Case No. 4:12-cv-00632**

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On August 14, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (Dkt. 12) should be GRANTED in part and DENIED in part.

The court has made a *de novo* review of the objections raised by Plaintiffs, as well as Defendants' response, and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (Dkt. 12) is GRANTED as to (1) Plaintiffs' claims of RESPA violations; (2) Plaintiffs' claims of breach of contract and anticipatory breach of contract; (3) Plaintiffs' unreasonable collection efforts claims; (4) Plaintiffs' claims of violations of the Deceptive Trade Practices Act and Texas Debt Collection

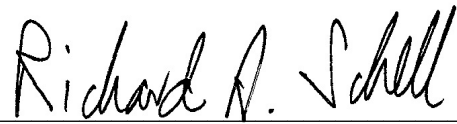
Practices Act Sections 392.301(a)(8) and 392.303(a)(2); and (5) Plaintiffs' suit to quiet title and trespass to try title against all Defendants, and those claims are dismissed with prejudice for failure to state a claim.

Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (Dkt. 12) is DENIED as to (1) Plaintiffs' TDCPA claims against Defendants CitiMortgage and Freddie Mac under Sections 392.304(a)(8) and (a)(19) of the Texas Finance Code; (2) Plaintiffs' claims of negligent misrepresentation against Defendants CitiMortgage and Freddie Mac; and (3) Plaintiffs' claims for declaratory judgment, an accounting of all transactions on their mortgage loan, and attorneys' fees against Defendants CitiMortgage and Freddie Mac, and those claims shall proceed herein.

Plaintiffs' negligent misrepresentation claim and Plaintiffs' TDCPA claims under Sections 392.304(a)(8) and (a)(19) of the Texas Finance Code, as well as any equitable claims, against the Unknown Defendants are dismissed without prejudice.

**IT IS SO ORDERED.**

**SIGNED this the 27th day of September, 2013.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The last name "Schell" is written with a large, prominent "S".

---

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE